

REMARKS

The undersigned confirms the telephone conversation with the examiner on 2/06/08 in which the advisory action dated 1/09/08 was discussed. As a result of that interview, claims 40 and 50 are amended herein, claims 47-49 and 51 are cancelled (claims 1-39 were cancelled in a previous amendment), and new claims 52 and 53 are added. Upon entry of this amendment, claims 40-46, 50, 52 and 53 will be pending.

Claim Rejections - 35 USC §112

Pursuant to the above-referenced telephone conversation, claim 40 is further amended to define the recess as being located below the generally horizontal plane defined by the counter top of the cabinet. The claim also states that the first and second power assist devices are mounted such that they do not extend into the recess below said generally horizontal plane as the breath guard is moved between said raised and lowered positions.

As thus amended, the wording in claim 40 fully complies with 35 USC §112, including the written description requirement of that section. In this regard, the test for determining if the written description requirement has been met is whether "An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, **figures**, diagrams, and formulas that fully set forth the claimed invention." (MPEP, Section 2163, page 2100-173; emphasis supplied.) Further, the MPEP makes it clear that there is no *in haec verba* requirement; only that the added claim limitations be supported in the specification through express, implicit or inherent disclosure. (MPEP, Section 2163, page 2100-175.)

Applicant's above-reference wording, as amended, clearly passes this test.

It will be observed in this regard that Figs. 2-7 show that the counter top (31) lies in a generally horizontal plane and that the recess (23) is located below the counter top. Further, Figs. 1, 2 and 3A-3C show the claimed first and second power assist devices (indicated in the Figs. at 95 and 97) in their various stages of operation. Specifically, Figs. 1 and 3A show the assist devices when the cover/breath guard is in its fully closed position; Fig. 3B shows the assist devices when the cover/breath guard in its partially open position; and Figs. 2 and 3C show the assist devices when the cover/breath guard in its fully open position. It is crystal clear from these Figures that the power assist devices remain at all times above and completely out of the recess (23) disposed below the generally horizontal plane defined by the counter top surface (31). The disclosure is unambiguous.

Accordingly, applicant respectfully submits that claim 40 is fully supported by the original specification of this application, and that the written description requirement of 35 USC §112 is fully satisfied.

Claim Rejections - 35 USC §103

Claim 40 in its current form is also submitted as defining subject matter patentable over the prior art, including Perzon and Fukushima et al.

In particular, claim 40 states that applicant's food product server includes a cabinet (e.g., 5 in Figs. 1 and 2) having a counter top (e.g., 31 in Fig. 6A) defining a generally horizontal plane and a recess (e.g., 23) below the generally horizontal plane for receiving one or more food serving pans (e.g., 27) for holding food products, and further that the first

and second power assist devices (e.g., 95, 97) are mounted such that they do not extend into the recess below the generally horizontal plane of the counter top as the breath guard is moved between its raised and lowered positions, as is evident from Figs. 1, 2, and 3A-3C. There are several advantages to this arrangement. First, food from the pans cannot spill down onto the power assist devices. Also, clear and unobstructed access to the walls of recess is provided, making them easy to clean. This is important in a food service environment where sanitary conditions are required. Further, the length of the recess (and thus the overall length of the cabinet) is reduced, since there is no need to provide extra room in the recess for the power assist devices.

In sharp contrast, the power assist devices in Fukushima extend down into the recess of the cabinet. This prior art arrangement is not desirable in a food service system, since the devices collect debris and make cleaning of the recess walls more difficult. Also, since food pans come in standard dimensions, extra room must be added to the length of the recess to accommodate the power assist devices, thus increasing the overall length of the cabinet. It is apparent, therefore, that applicant's claimed design represents a substantial and non-obvious improvement over Fukushima.

The other prior art of record similarly fails to teach applicant's invention as defined by claim 40, which is submitted to be allowable.

Claims 41-46 and 50 depend, either directly or indirectly, from claim 40 and are submitted to be allowable for at least the same reasons as claim 40. Further, the dependent claims cite additional features not shown or suggested by the prior art. In this regard, applicant appreciates the acknowledgement in

paragraph 6 of the Office action of 11/19/07 that claims 43-45 contain allowable subject matter.

New Claims 52 and 53

Claim 52 depends from claim 40 and further specifies:

(i) a frame mounted on the cabinet, the frame comprising a pair of upright side frame members extending above the generally horizontal plane of the counter top surface at opposite sides of the recess,

(ii) wherein the second power assist device (e.g., 97 in Fig. 6A) is positioned toward the front customer side of the product server and has a first connection (e.g., 151) with one of the upright side frame members (e.g., 41) and a second connection (e.g., 161) with the breath guard, and

(iii) wherein the first power assist device (e.g., 95 in Fig. 6A) is positioned between the second power assist device (e.g., 97) and the rear employee side of the product server and has a connection (e.g., 131) with the breath guard closer to the employee side of the product server than said second connection of the second power assist device.

This specific arrangement of the power assist devices has been found to be especially convenient, and it is neither shown nor suggested by the prior art. It will be noted this regard that the Fukushima et al. reference discloses a completely different arrangement, namely, one in which the gas springs 1 and damper cylinders 2 are attached to the main body 21 and cover plate 3, and not to a frame on the main body, and in which the positions of the gas springs and damper cylinders are reversed compared to applicant's claimed configuration. (In Fukushima et al. the gas springs, not the damper cylinders, are located closer to the hinged side of the cover.)

For this additional reason, claim 52 is submitted to be allowable.

Claim 53 is an independent claim directed to the specific power assist device arrangement described in claim 52 discussed above, i.e., an arrangement wherein the second power assist device (e.g., 97 in Fig. 6A) is positioned toward the front customer side of the product server and has a first connection (e.g., 151) with one of the upright side frame members (e.g., 41) and a second connection (e.g., 161) with the breath guard, and wherein the first power assist device (e.g., 95 in Fig. 6A) is positioned between the second power assist device (e.g., 97) and the rear employee side of the product server and has a connection (e.g., 131) with the breath guard closer to the employee side of the product server than the second connection of the second power assist device. This arrangement is neither shown nor suggested by the prior art, including Fukushima et al. for the reasons given above in regard to claim 52.

Accordingly, claim 53 is submitted to be allowable.

Requirement for Information

During the above-referenced telephone conversation between the undersigned and the examiner, the examiner stated that the information requested in the Office action dated 12/13/07 in co-pending application Ser. No. 11/013813 should also be provided in this application Ser. No. 10/662783. The particular information requested in the Office action is as follows: (1) any and all information pertaining to any ownership or assignment interest by Subway; (2) information as to any inventorship contribution on the part of Subway or anyone other than the named inventors; and (3) any and all information pertaining to selling said food product server equal to or more than one (1) year prior to the date of 9/15/03.


As to items (1) and (2), application Ser. No. 11/013813 contains claims directed to a food product server with a dual-purpose breath guard. The application names Mr. Yingst and Mr. Frederick Deluca as co-inventors, both of whom contributed to the claimed invention. At the time of the invention, Mr. Yingst was employed by Duke Manufacturing Company and Mr. Deluca was President of Subway. Mr. Yingst assigned his invention to Duke. Mr. Deluca did not. The present application, Ser. No. 10/662,783, contains claims directed to a food product server having a specific power assist design for a breath guard. This application names only one inventor, Mr. Thomas Yingst, who has assigned his invention to Duke. Applicant admits that the subject matter claimed in application Ser. No. 11/013813 is prior art against the present application Ser. No. 10/662783. (See Mr. Yingst's statement accompanying the IDS filed 10/08/04 in this application Ser. No. 10/662,783.) However, application Ser. No. 11/013813 contains no claims involving the power assist feature of application Ser. No. 10/662783.

Regarding item (3), applicant has no information to provide because there were no sales of the food product server prior to 9/15/02.

CONCLUSION

In view of the foregoing, favorable consideration and allowance of this application is requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael E. Godar". The signature is fluid and cursive, with a long horizontal stroke at the end.

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